

Eisenberg, Mindy

From: Goodin, John
Sent: Friday, August 28, 2015 2:12 PM
To: Kaiser, Russell; Downing, Donna; Eisenberg, Mindy; Christensen, Damaris; Kwok, Rose
Subject: FW: Clean Water Rule effective date

Sent from my Windows Phone

From: [Evans, David](#)
Sent: 8/28/2015 2:10 PM
To: [Moraff, Kenneth](#); [Matthews, Joan](#); [Capacasa, Jon](#); [Pomponio, John](#); [Giattina, James](#); [Hyde, Tinka](#); [Honker, William](#); [Flournoy, Karen](#); [Hestmark, Martin](#); [Garcia, Bert](#); [Woo, Nancy](#); [Montgomery, Michael](#); [Opalski, Dan](#); [Allnutt, David](#)
Cc: [Kopocis, Ken](#); [Best-Wong, Benita](#); [Goodin, John](#); [Sawyers, Andrew](#); [Southerland, Elizabeth](#)
Subject: FW: Clean Water Rule effective date

Hi Folks,

I expect many of you may have received the message below from your RA, but I wanted to be sure you all were aware of the North Dakota District Court decision that affects implementation of the Clean Water Rule. See below, and let me know if any questions.

Dave

David Evans

Deputy Director
Office of Wetlands, Oceans and Watersheds
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202-566-0535

From: Kopocis, Ken
Sent: Friday, August 28, 2015 11:14 AM
To: Spalding, Curt; Enck, Judith; Garvin, Shawn; McTeerToney, Heather; Hedman, Susan; Curry, Ron; Hague, Mark; McGrath, Shaun; Blumenfeld, Jared; McLerran, Dennis
Cc: Adm13McCarthy, Gina; Giles-AA, Cynthia; Garbow, Avi; Carleton, Ron; Fritz, Matthew; Vaught, Laura; Distefano, Nichole; Reynolds, Thomas; Beauvais, Joel; Rupp, Mark
Subject: Clean Water Rule effective date

Colleagues,

The Clean Water Rule effective date is today. Thank you to you and your staff for getting us to this point.

However, on August 27, the District Court for North Dakota issued a preliminary injunction enjoining the Clean Water Rule. The longstanding position of the Department of Justice is that, as a matter of law, a

District Court's authority to issue preliminary injunctive relief only extends to the parties before it. The government follows this principle in all cases, including in cases where parties challenge rules of nationwide applicability.

Therefore, it is the government's position that the injunction only applies in the following states: Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Wyoming. In these states, the prior regulation will continue to apply. In all other states and jurisdictions under CWA jurisdiction the new rule applies beginning today.

This is still a preliminary step in the litigation. There are currently 14 cases pending in district courts around the country and 14 parties who have challenged the rule in the 6th Circuit Court of Appeals. Our position is that only the 6th Circuit has jurisdiction to hear the case. Earlier this week courts in Georgia and West Virginia agreed with us that the issue should be considered in the Circuit Court (unlike the court in North Dakota).

We are seeking to consolidate the district court cases in one court, precisely to avoid the confusion we now see. We will also be seeking to have the 6th Circuit hear the jurisdictional question soon. If it decides it has jurisdiction, the preliminary injunction could be vacated.

As to the North Dakota district court preliminary injunction, we are considering our appeal options with the Department of Justice.

Ken Kopocis
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